IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 6105 OF 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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NATIONAL INSURANCE COMPANY - Petitioner(s)
Versus
ASHWIN VRAJLAL RAJGOR & ORS. - Respondent(s)

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Appearance :
MR. DAKSHESH MEHTA for Petitioner(s).
MR. MEHUL S. SHAH for Respondent(s) : 1 - 2.
RULE UNSERVED for Respondent(s) : 3.
RULE SERVED for Respondent(s) : 4 - 5.
MS. LILU K. BHAYA for Respondent(s) : 6.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 10/03/2006

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Mr.Dakshesh Mehta, learned Counsel appears for the

petitioner. Mr.Mehul S.Shah, learned Counsel appears for respondent Nos.1 and 2. It is reported that `Rule' on respondent No.3, the driver of the vehicle, is not served, `Rule' is served on respondent Nos.4 and 5. Ms.Lilu K.Bhaya, learned Counsel appears for respondent No.6.

We have heard the parties.

2. In a Claim Petition, the claimants submitted an application to the Court that an interim award be made in their favour under Section-163A of the Motor Vehicles Act, 1988 (for short “the Act”). The Court, accordingly, heard the parties and made an order against the Insurance Company, directing it to deposit a sum of Rs.3,86,000/-. After some time, the present petitioner-Insurance Company came to know that the Cover Note, on which reliance was placed, was forged, certain interpolations were made in it and on the strength of such interpolations, liability of the Company was sought to be held. They, accordingly, submitted an application for review. The application for review came to be rejected by the said Claims Tribunal. Being aggrieved by the said order, the Insurance Company is before this Court.

3. Mr.Mehta, learned Counsel for the petitioner, relying upon a judgement of the Supreme Court in the matter of ***United India Insurance Co. Ltd. vs. Rajendra Singh & Ors.***, ***(2000) 3 SCC 581***, submits that in a case of fraud, specially,

when the allegations are that the claimants are playing fraud and the facts came to the notice of the Insurance Company subsequent to the passing of the first order, the Court, which had passed the first order, cannot close its eyes to the facts and it would not be powerless in recalling its first order if the fraud is established.

4. In the present matter, the controversy is that whether the Cover Note, on the basis of which the Insurance Company has been held liable, was, in fact, issued by the Insurance Company as it is or there had been some interpolations in the same. These facts are required to be proved by the Insurance Company by leading cogent evidence, by examining the witnesses and by producing the carbon copy/true duplicate copy of the original Cover Note. Simply because the Insurance Company says that a fraud has been played, an order cannot be reviewed or recalled unless the said pleading has substantial foundation to stand.

5. If the matter is still pending before the learned Tribunal, then, the petitioner certainly would be entitled to raise all these questions and in case, they establish their plea of fraud, then, they would be entitled to pray to the Court that the amount, directed to be paid under Section-163A of the Act, be recovered back from the claimants and be paid back to the petitioner. We are sure that if such a situation arises, the Court would decide the issue in accordance with law

and the facts produced before it. In case the Claims Petition has already been disposed of, then, this petition would not survive because it is against an interim order where the petitioner's Review Application had been dismissed. In any case, we are not required to interfere at this stage.

6. With the observations and liberty aforesaid in favour of the petitioner, we dispose of the petition. Rule is discharged. Interim order, if any, is vacated. No costs.

[R.S.Garg, J.]

[Bankim N. Mehta, J.]

*kamlesh**